Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Further Comment Requested	)	
To Update and Refresh Record	)	CC Docket No. 95-20; 98-10
On Computer III Requirements	)	

COMMENTS OF EVOICE, INC.

eVoice, Inc. ("eVoice") hereby submits the following comments in connection with the March, 2000 Further Notice of Proposed Rulemaking, CC Docket Nos. 95-20, 98-10 ("FNPRM"). eVoice strongly endorses the goals and objectives of the Federal Communications Commission ("Commission"), which gave rise to the Computer III and ONA safeguards. Violations of the Computer III and ONA safeguards, however, undermine these goals and objectives and harm the public and competitors. EVoice, accordingly, urges the Commission to continue all of the current Computer III and ONA safeguards and enact the additional safeguards set forth in Sections V and VI, below. eVoice also urges the Commission to strengthen its enforcement efforts. Finally, eVoice recommends that the Commission institute an enforcement proceeding concerning the BOCs' noncompliance with Computer III and ONA safeguards, and require violators to provide information services subject to Computer II structural safeguards.

I. OVERVIEW AND BACKGROUND INFORMATION

A. Overview of Comments

The FNPRM asks parties to update and refresh the record from the January 30, 1998 Further Notice of Proposed Rulemaking[1] ("1998 FNPRM") in general, as well as list specific areas for parties to provide comments. Also, the FNPRM asks parties to discuss any developments in the information services market since 1998.

eVoice was formed after the 1998 FNPRM was issued and, therefore, appreciates this, being its first, opportunity to formally participate in the Commission's public review of the Computer III and ONA safeguards. Since this is eVoice's first opportunity to participate, a brief overview of eVoice and the information services market in general is provided as a background so the Commission can better understand eVoice's perspective and specific comments (see Section I, parts B and C, below).

eVoice's areas of comment are limited because eVoice is a relatively new and small competitor and is focused on the residential and small business voice mail markets, on both a retail and wholesale basis. Accordingly, eVoice submits comments on the following areas requested by the Commission: 1. developments since 1998 in two information services markets: residential and small business voice mail (see Section II, below); 2. the effectiveness of the Computer III nonstructural safeguards (see Section III, below); 3. information on whether ISPs are obtaining needed services from the Bell Operating Companies ("BOCs") (see Section IV, below); 4. the extent nonstructural safeguards should continue and / or be modified, ideally being made more self-

enforcing (see Section V, below); and 5. whether the BOCs should unbundle their networks for ISPs along the same lines as for competitive telecommunications providers (see Section VI, below).

B. eVoice's History

eVoice did not exist when the Commission issued the 1998 FNPRM; eVoice was formed later that year. For that reason, this is eVoice's first opportunity in a public proceeding to inform the Commission about some of the information services markets and its experience in dealing with the BOCs.

eVoice is an enhanced voice mail company. It is the only company that provides voice mail services for homes and small businesses nationwide at a cost much lower than traditional phone company voice mail. eVoice's services are offered as retail services to consumers and small businesses, and as wholesale, private-label services to wireless carriers, wireline carriers and web portals. Many of eVoice's services' features and functions are new and/or innovative, which is exactly what the Commission has been encouraging.

eVoice's retail voice mail services utilize the Internet and help consumers and small businesses organize, consolidate and manage their daily voice communications. A person can sign up for eVoice's services via the Internet. Subscribers can pick-up messages by phone, email or the Internet. Accessing messages by email or the Internet is a great convenience and cost-savings for consumers and business people who travel – they no longer have to place an expensive wireline call to access voice mail messages

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[1] *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements,* (1998) 13

left at home or work when they are away. Furthermore, subscribers can also access their voice mail messages by phone for free from anywhere in the United States, via eVoice's toll-free number. Subscribers can be notified of a new voice mail message via an email sent to any email account; a page sent to any alphanumeric pager; or a message sent to any email-enabled cellular phone.

eVoice's wholesale voice mail services are provided on a private-label basis. Wholesale customers are wireless carriers, wireline carriers and web portals who want to add voice mail services to their array of services. eVoice's voice mail services help these companies lower customer acquisition costs, reduce customer churn, differentiate their service offerings, and increase revenue.

As a national provider of voice mail services, eVoice's relationship with each and every BOC is critical. If any one BOC does not fully comply with the Computer III and ONA safeguards, eVoice's efforts could be blocked and its business plan and viability will be put into serious jeopardy. Because eVoice deals with all of the BOCs, each arguably "minor" infraction of the Computer III and ONA safeguards is compounded and suddenly eVoice finds itself at risk. This is what eVoice is experiencing today. In many ways its interaction with the BOCs is "death by a thousand cuts". What eVoice has experienced since its founding in 1998, is very similar to what competitive local exchange carriers have experienced. Delays, no responses, missed promises and neglect by the BOCs all add up. This action by the BOCs represents a serious risk to eVoice's

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FCC Rcd 6040.

business, as well as to the Commission's goal of cheaper and more innovative information services available to the public at large.

C. History of the Information Services Market and its Current State

Fifteen years ago the Commission allowed the BOCs to enter the information services market without structural separation of their information services operations.[2] Instead the BOCs could offer information services on a nonstructural basis subject to compliance with the Computer III safeguards. A BOC's entry into the information services market on a nonstructural basis was conditioned on it establishing Comparably Efficient Interconnection ("CEI") plans and an Open Network Architecture ("ONA") plan that comply with the Commission's ONA requirements.[3] The Computer III/ONA framework requires the BOCs to provide Information Services Providers ("ISPs") access to their network and to deploy new and efficient services for the public using advanced technologies.[4] The Commission in Computer III, as in Computer II, was concerned with anticompetitive behavior by the BOCs, which could undermine competition and block the advancement of new technologies, services and competitors.[5] The Commission enacted the ONA process to foster "efficient interconnections and unbundled offerings that [will] limit a carrier's ability to engage in discrimination and be hospitable to the

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[2] *In the Matters of Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)* (1986) 104 FCC 2d 958.

[3] *Id.*, at para. 4.

[4] *In re the Matter of Filing and Review of Open Architecture Plans, Memoranda Opinion And Order*, (1990) 6 FCC Rcd 7646, at para. 18.

[5] *In the Matters of Amendment of Section 64.702 of the Commission's Rules and Regulations (Third Computer Inquiry)* (1986) 104 FCC 2d 958, at paras. 12, 82-87 and 98.

competitive offering of information services,"[6] and it considered "contributions of advanced technologies to be an essential part of ONA."[7]

In the 1998 FNPRM the Commission stated three complementary goals: 1. making innovative information services available across America; 2. ensuring that there is continued competition in the information services market; and 3. establishing safeguards for the BOCs that make sense in light of the current technological, market and legal conditions.[8] Consistent with the above goals, the Commission again stated that it wanted the BOCs to provide new technologies and innovative information services that benefit the public, as well as ensure that they make their networks available to competitive providers of services.[9] Furthermore, the Commission restated the need for the Computer III and ONA safeguards –

> "to prevent the BOCs from using their local exchange market power to engage in improper costs allocation and unlawful discrimination against ISPs. … BOCs may have an incentive to use their existing market power in local exchange services to obtain an anticompetitive advantage in these other markets by improperly allocating to their regulated core businesses costs that would be properly attributable to their competitive ventures, and be discriminating against rival, unaffiliated ISPs in the provision of basic network services."[10]

eVoice fully supports the Commission's three complementary goals. eVoice also would like the BOCs to provide new technologies and make their networks available, so

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[6] *In re the Matter of Filing and Review of Open Architecture Plans, Memoranda Opinion And Order*, (1988) 4 FCC Rcd 1, at para. 4.

[7] *In re the Matter of Filing and Review of Open Architecture Plans, Memoranda Opinion And Order*, (1990) 6 FCC Rcd 7646, at para. 18.

[8] *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, (1998) 13 FCC Rcd 6040, at para. 1.

[9] *Id.*, at para. 7; and this FNPRM at para. 2.

[10] *Id.*, at para. 9.

that eVoice could provide innovative information services to the public at reasonable costs.[11] Unfortunately, eVoice, as stated below, has experienced some of the anticompetitive behavior that the Commission has earnestly tried to prevent. Accordingly, current market conditions and anticompetitive behavior by the BOCs demand: 1. continued regulatory oversight by the Commission of the BOCs in the information services market; 2. strengthened regulatory safeguards; and 3. vigorous enforcement of all Computer III and ONA. If these actions are not taken, the Commission's goals and objectives will not be realized.

As further described below, eVoice's first hand experience clearly shows that the BOCs have repeatedly violated the existing Computer III and ONA safeguards.[12] The BOCs are now the dominant provider in the residential and small business voice mail markets. From eVoice's first-hand experience, this dominance does not appear to be through superior effort or superior service. Rather, this dominance seems to be through anticompetitive practices, which have thwarted competition and competitors. As eVoice shows below, the BOCs have leveraged their monopoly power in the local telecommunications market to create monopoly power in certain information services markets. The BOCs practices have severely dampened competition, harmed competitors, and prevented consumers from receiving the benefits of competition –

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[11] eVoice's efforts to obtain LATA-wide SMDI is a prime example of the BOCs' refusal to make new technologies and their networks available, so that ISPs like eVoice can provide innovative services at reasonable costs to the American public. See Section III, part E 1, below, for specifics on eVoice's efforts to obtain LATA-wide SMDI.

[12] For the most part eVoice's comments are limited to its own experience in the residential and small business voice mail markets. The experience of an ISP, however, should be the most valued evidence this Commission receives, because it is the experience of the ISP shows whether the BOCs are

namely new, innovative and/or improved information services at competitive prices. Unless the Commission causes the BOCs to immediately and continuously comply with the Computer III and ONA safeguards, the Commission's goals of making innovative information services available and having robust competition in all information services markets will not be achieved.

II. OVERVIEW OF THE VOICE MAIL MARKET INDICATES ENFORCEMENT IS NEEDED

In part as an indication of the effectiveness of the nonstructural safeguards, the Commission requests information on developments in the information services markets since 1998. As an update to the 1998 FNPRM, the Commission also seeks information on the level of competition and whether continued competition serves to diminish further anticompetitive actions by the BOCs.[13] Since eVoice is a relatively new and small competitor in the residential and small business voice mail markets, its experience and comments are limited to those information service markets.

In the 1998 FNPRM, the Commission noted that the information services market was truly competitive.[14] The Commission specifically commented on the growth of the Internet and competition in the Internet access market. Competition in some information services markets, however, does not mean competition in all information services markets. A brief overview of the residential and small business voice mail markets and the BOCs' behavior therein, clearly shows that competition is not in full

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complying with the letter and spirit of Computer III and ONA, and whether the forces of competition are firmly in place.

[13] *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, (1998) 13 FCC Rcd 6040, at para. 36.

[14] *Id.*

effect and, therefore, eVoice's recommendations regarding continuing all existing safeguards, adopting additional safeguards, and instituting an enforcement proceeding are sorely needed (see Sections V and VI, below).

A. No Effective Competition In the Residential and Small Business Voice Mail Markets

In 1988, at the dawn of the introduction of voice mail and other information services, the regulators and the country at large expected the entrance of new providers, new services and new technologies. Many information services, like voice mail, were already created and the underlying technology and infrastructure were virtually in place. The public was also ready for the benefits of voice mail.

In a new market, assuming that barriers to entry do not exist, one should find a combination of existing and new companies competing. One need only look at some relatively newer markets that exist today, such as personal computers, software, and services via the Internet, to see how new and open markets works. If artificial barriers are created, then a new market doesn't develop this way. That is what has happened in at least the residential and small business voice mail markets.

In 1998, there was no meaningful level of competition in the residential and small business voice mail markets. In each BOC service area, it was the BOC who was the dominant voice mail provider in both of these markets. Lack of competition in these two markets is compounded by, and may result from, the lack of competition in the local exchange and exchange access markets. As the Commission noted, lack of competition in the local exchange and exchange access markets give the BOCs the

ability and incentive to engage in anticompetitive behavior against competing ISPs in information services markets, like voice mail.[15]

Today there still is no meaningful competition in the residential and small business voice mail markets. The BOCs' still dominate their service areas. Based on information from the International Data Corporation ("IDC"), the BOCs hold over 90% of these two markets nationwide.

eVoice is a relative newcomer to the residential and small business voice mail markets and as of today does not pose a significant competitive threat to the BOCS. eVoice may never pose such a threat, because the BOCs' noncompliance with the Computer III and ONA safeguards, as documented below, will prevent eVoice from succeeding.

The level of competition in the local exchange and exchange access markets has not been enough to prevent the BOCs from engaging in anticompetitive behavior against a competing ISP like eVoice. The Commission thought the BOCs would not be anticompetitive in the information services market if there was competition in the local exchange and exchange access markets, since ISPs could simply go to a competing telecommunications carrier.[16] This expectation simply has not been realized. First it is a significant undertaking to switch carriers. It affects an ISP's business priorities, customers and cost structure. Second, eVoice's experience is that if a BOC wrongfully denied an ISP a service, the ISP cannot obtain it from competing telecommunications carriers. The service can't be obtained because the BOC likewise denies the functionally

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[15] *Id.*, at para. 51.

similar service to competing telecommunications carriers.[17] While arbitration may ultimately result in competing carriers obtaining the service; arbitration is expensive and time consuming and may not result in the service being provided in the time frame needed before the small-capitalized ISP is put out of business.

eVoice agrees with the Commission's tentative conclusion that competition can serve as an additional check to ensure that BOCs don't act anticompetitively. For this to hold true, however, the competition must be firmly established and have significant players. This is not the case in the residential and small business voice mail markets. Moreover, while competition is useful to protect against anticompetitive behavior by the BOCs, competition alone is not enough. Regulatory safeguards, such as the Computer III and ONA safeguards, are essential. Like competition, however, safeguards alone are not enough. The safeguards must be strictly, promptly and consistently enforced. Furthermore, there must be meaningful consequences for violating the safeguards.

eVoice is very concerned that after 15 years there is no meaningful competition in an information service market as attractive as voice mail. The IDC estimated that in the United States, the residential voice mail market alone will grow from $1.3 billion in

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[16] *Id.*, at para. 49

[17] This is exactly the case with Pacific Bell and LATA-wide SMDI. Pacific Bell has not provided eVoice with this repeatedly requested service. eVoice contacted another telecommunications carrier and indicated that it would like to obtain LATA-wide set/reset message waiting indicator functionality from the carrier. The competing carrier was willing to provide the service to eVoice, but in order to do so the carrier needed to obtain an unbundled network element (i.e. SS7 access) from Pacific Bell. When the carrier contacted Pacific Bell about the required network element, Pacific Bell caused significant time delays, and without making a firm time commitment, eventually indicated that it was considering "potential deployment" of an SMDI based service in approximately one year. The nature of the voice mail market, and the costs of going with the four or five times more expensive switch-based SMDI service

1999, to $2.3 billion in 2003. Furthermore, the IDC believes that voice mail services are one of the most profitable services for the BOCs. In a growing and profitable market like voice mail, one would expect numerous competitors and vigorous competition. Yet, as evidenced by market share, there is no meaningful competition in the residential or small business voice mail markets. Furthermore, competitors in the residential and small business voice mail market have failed one by one.[18] When eVoice looks at other markets that the BOCs dominate it is concerned that its fate will be the same, in large part due to BOCs' anticompetitive actions.[19]

B. BOCs Act Like Monopolists in the Voice Mail Market

Another way to examine an information services market, besides looking at the level of (or in this case, the lack of) meaningful competition, is to look at the actions of the primary players – the BOCs. A healthy, competitive market is one where consumers have choices and providers are introducing new features, functions and

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that Pacific Bell currently offers, could very well put eVoice out of business before any LATA-wide functionality is made available to the carrier.

[18] Possibly the latest failed competitors are ThinkLink, which closed operations in February of 2001, and Echobuzz, which closed operations in July of 2000. It is important to note that ThinkLink, like eVoice, was also interested in LATA-wide SMDI, but was unable to obtain it in the key California market.

[19] For example, several years ago the DSL market was held out as a prime example of how competition was at work and that BOCs were no longer going to be monopolies. But this is far from true today. A March 23, 2001 article from the San Francisco Chronicle, concerning NorthPoint declaring bankruptcy and selling its assets to AT&T, states:

> "Observers say NorthPoint's demise bodes poorly for competition in the DSL market. NorthPoint, along with a handful of other DSL firms, badly mapped out plans to take on the local phone companies by offering speedy Internet access through traditional telephone wiring. But more than a half dozen independent DSL companies have filed for bankruptcy or shut down in recent months. NorthPoint rivals Covad Communications in Santa Clara or Rhythms Net-Connections have cut hundreds of jobs in recent months…Meanwhile, the Baby Bells have dominated the DSL market. SBC Communications, parent of Pacific Bell, is the largest DSL provider in San Francisco and nationwide…. 'It sends a chilly message', said Regina Costa, telecommunications analyst for the Utility Reform Network, a San Francisco consumer group. 'It's the end of competition.'" (emphasis added)

services and often where prices are decreasing. The BOCs actions indicate that the voice mail markets are unhealthy and non-competitive.

The BOCs have a monopoly in the residential and small business voice mail markets and are acting as one would expect monopolists to act. Namely the BOCs: 1. provide mediocre service; 2. don't regularly innovate and introduce new features and functions; 3. generally don't compete with one another but instead stay primarily in their standard territory; and 4. generally raise prices. The BOCs can act this way because their customers are captive. The BOCs don't have to be concerned that a competitor will take away dissatisfied customers – since there is no significant voice mail competitor in the residential or small business markets. Furthermore, when a competitor does come along, the BOCs, by not fully complying with the Computer III and ONA safeguards, can make it near impossible for the competitor to succeed.

III. NONSTRUCTUAL SAFEGUARDS ARE NECESSARY BUT NOT SUFFICIENT AS EVIDENCED BY BOCS REPEATED VIOLATIONS

The FNPRM requests parties to comment and provide information on the effectiveness of the Computer III nonstructural safeguards. It is eVoice's market experience that the Computer III safeguards are necessary but are not sufficient. The basic structure of the Computer III safeguards is sound. When a BOC complies with the safeguards (e.g. provides a requested ONA service in a relatively reasonable time frame and at a reasonable cost) the result is that eVoice, and any other ISP, is able to provide to the American public new and innovative services at competitive prices. When a BOC, however, does not comply with the safeguards, ISPs and the public are injured.

eVoice's repeated experience indicates that existing safeguards have a major flaw. This flaw is that the BOCs repeatedly violate the safeguards without punishment. No matter how well developed, no safeguard can be deemed effective if the BOCs don't comply. Furthermore, there is no need for the BOCs to comply with the Computer III and ONA safeguards if there is no real danger of being discovered; let alone punished and required to make whole the public and injured competitors.

The following are examples of BOC violations of the safeguards that eVoice has experienced.

A. Violations of 120-Day Procedure

In this FNPRM, the Commission, in its efforts to update and refresh information received in the 1998 FNPRM, asks parties to update information on the effectiveness of the 120-day procedure and provide specific examples.[20] The procedure is only effective if the BOCs comply; and it has been eVoice's experience, unfortunately, that the BOCs often do not comply.

A key part of Computer III for eVoice, or for any new, small ISP, is the procedure in which it may request and obtain new ONA services from the BOCs. Under this procedure an ISP submits an ONA service request to the BOC for a new service. The BOC must respond promptly and completely. The Commission ordered the BOCs to provide a written response to an ISP's ONA service request within 120 days of receipt of the request, stating unequivocally whether the BOC will provide the service, and if

[20] *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, (1998) 13 FCC Rcd 6040, at para. 88.

not, identifying the impediments that prevent provision of the service.[21] Commission authorized impediments the BOC may report are that the requested service is currently technically infeasible or that there currently is insufficient market demand for the service. Such a denial, however, does not end the BOC's obligations. The BOC must make good faith efforts to continue examining whether it can provide the service. The Commission realized that a specific service may be technically infeasible or may have insufficient market demand one day, but as time goes on, the service may later become technically feasible or have sufficient market demand.

eVoice has experienced numerous violations of the 120-day procedure. All of these violations result in the significant frustration of eVoice's business plans. All of these violations prevent eVoice from being able to obtain new technologies or access the BOCs' networks, contrary to the objectives of the Commission.[22] This in turn similarly frustrates eVoice's and the Commission's efforts to bring new and innovation information services to the public at competitive prices.

The most common violation is that the BOCs either don't respond or don't give a mandated response as required within the 120-day period. In fact, eVoice has several examples of BOCs taking more than a year to provide a response that meets the Commission's requirements. For example, eVoice has been seeking LATA-wide SMDI service from the BOCs. This service allows an ISP to set and reset the message indicator

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[21] *In the Matter of Filing and Review of Open Network Architecture Plans* (1988) 4 FCC Rcd 1, at para. 397.

[22] See footnote 9, above.

on a LATA-wide basis.[23] Some BOCs provide this service today. Other BOCs do not provide the LATA-wide service, but instead provide a service that allows an ISP to set and reset the message indicator on a switch-by-switch or a multi-switch basis. LATA-wide SMDI, however, is critical for any ISP serving a large area since without it the ISP's related telecommunications and equipment costs are four to five times higher.

Three BOCs have used this tactic of not fully complying with the 120-day procedure to effectively block eVoice's effort to obtain the technically feasible and very efficient LATA-wide SMDI service.[24] These BOCs are Pacific Bell, Southwestern Bell Telephone, and Verizon in New York and in the New England States. eVoice requested these BOCs to provide LATA-wide SMDI anywhere from 15 to 19 months ago. While the specifics may vary, the basic case is the same - - all three did not properly respond to eVoice's request and as a result have successfully frustrated an ISP's efforts to obtain a technically feasible and in-demand ONA service.

B. The BOCs Repeatedly Fail to Meet Commitments and Cause ISPs to Expend Limited Administrative Resources

Another common BOC tactic is to "string along" an ISP. On several different occasions, various BOCs have indicated to eVoice that they are working on a service and that the service will be available by a certain date. The promised date comes and goes and the service is still not available. When questioned about the missed date, the

[23] Message indicators are either audible or visual and inform an ISP customer that a message is waiting. The audible method allows the customer to hear a stutter-dial tone when the customer picks up his/her phone; the visual method allows the customer to see a light turned on, assuming the customer's phone has a light or the customer has a message waiting indicator device attached to his/her phone. Without message indication an ISP's services would be disadvantaged in the marketplace, since customers would not have an easy means to determine when they have a message.

BOC provides excuses and then commits to another date, which is usually also missed. This practice makes it extremely difficult for eVoice to deliver its business plan, if underlying critical promises by the BOCs are not kept.[25]

Also damaging to eVoice's business is that BOCs seemingly, uniformly fail to take seriously their obligations and commitments to an ISP like eVoice. This results in eVoice spending a significant amount of limited administrative resources in the continued follow up with the BOCs. This disregard by the BOCs occurs in numerous ways. First, eVoice makes an ONA request for service, and has to spend a significant amount of time following-up with the BOC trying to make sure the BOC provides the Commission mandated response. Typically, a BOC won't provide eVoice with a status report on its ONA request, even when eVoice has requested it and the BOC agreed to provide one. Furthermore, a BOC generally doesn't notify eVoice as soon as it realizes it is going to miss a promised availability date. Also, a BOC never makes an attempt to compensate eVoice for damages suffered because of the missed date. A BOC does not appear to take any additional effort to ensure that future promised dates are met, since future promised dates are also often missed by the BOC. It has gotten to the point where it simply is not prudent for eVoice to rely on what a BOC promises.

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[24] BOCs receive a double benefit by not offering LATA-wide SMDI, but instead offering less efficient versions: 1. they obtain more revenue from ISPs; and 2. they make ISPs less efficient and weaken ISPs as a competitive threat.

[25] Examples of this tactic can be found in eVoice's dealings in the following areas: 1. Verizon providing LATA-wide SMDI service to eVoice in New York and the New England States; 2. Verizon modifying their express-track billing so that eVoice is treated on the same basis as Verizon's information services operation in Virginia, West Virginia, Maryland and Washington D.C.; and 3. Pacific Bell providing LATA-wide SMDI service to eVoice in California.

New and small competitors should not have to constantly spend their limited resources to follow-up with or police the BOCs. In order for the Computer III framework to work, a BOC must take seriously the Computer III safeguards, as well as the BOC's relationship and interactions with ISPs. Causing start-ups and small competitors to constantly follow-up with and push back on the BOCs is not a sign that competition is healthy and that the time is right to relax regulation.

C. The BOCs Have Not Correctly Reported ISP Requests as Required

While eVoice has made numerous requests of BOCs for ONA services, not all of these requests have been reported in the required Annual Compliance Reports.

In September of 1999, eVoice made a request of two BOCs (i.e. Pacific Bell and Southwestern Bell) for LATA-wide SMDI service. Neither BOC reported eVoice's request in their 1999 Annual Compliance Report, filed April 19, 2000.

Likewise in 1999, eVoice requested Bell Atlantic (now known as Verizon) to provide two ONA OSS services -- a mechanized interface for ordering ONA CSNs and third party billing for certain Bell Atlantic services. Neither of these requests were reported in Bell Atlantic's 1999 Annual Compliance Report, filed April 14, 2000.

Furthermore, Bell Atlantic stated that it had:

> "deployed a multitude of OSS access capabilities for ISPs offering a wide variety of functions and capabilities covering provisioning, repair, maintenance, billing and account inquiry. Bell Atlantic will continue to enhance existing OSS access systems and develop new access systems to meet identified ISP requirements."[26]

Bell Atlantic's statement gives the impression that all ISP needs are promptly and willingly being met by Bell Atlantic. That, however, is contrary to eVoice's

experience with its request for a mechanized interface and third party billing – now almost two years later, eVoice is still waiting for Bell Atlantic to meet its obligations and provide these needed services.

D. BOCs Give Their Own Information Services Group Preferential Treatment

eVoice has seen a BOC give preferential treatment to its own information service offering. In parts of Verizon's territory, eVoice has been trying, unsuccessfully, to have Verizon bill eVoice directly for the Busy / Delayed Call Forwarding ("BDCF") CNS that eVoice orders. Instead, Verizon bills eVoice's customers for BDCF. The result is that eVoice cannot have just one line item for its voice mail service (which includes the cost of BDCF); instead, customers receive one charge for voice mail and then another for BDCF. This confuses eVoice's customers and creates the impression that eVoice's service is more expensive or less sophisticated. eVoice is then forced to use its limited administrative resources to explain to customers why there is a separate charge by Verizon for BDCF.

On the other hand, Verizon's information services group is billed directly for BDCF. The rationale given by Verizon for this discrepancy is that Verizon's billing system allows it to directly bill the Verizon information services group, because the group is part of Verizon, and the billing system recognizes Verizon as the billing party of record. The billing system, however, cannot bill eVoice directly for BDCF since the billing system shows eVoice as a third party and not the customer of record. Verizon claims to have mitigated the problem by crediting an eVoice customer's account for the

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[26] Bell Atlantic's Annual Compliance Report, April 14, 2000.

amount for BDCF, and then rebilling eVoice. This still is confusing to existing and potential customers and continues to cause eVoice to divert precious resources to handle this confusion. Verizon's explanation for the different treatment may be accurate, however, accuracy of an explanation does not then allow a BOC to give its own entity preferential treatment.

E. BOCs Make ISPs Use Legacy Services which Hampers the Introduction of New Services and Competition

eVoice is trying to provide new innovative services and capabilities to the public. In order to do so, eVoice must receive from the BOCs services using relatively current technologies. Yet, the BOCs, by not fully complying with the Computer III and ONA safeguards, continue to foist on eVoice slower, less-reliable legacy services and systems. This is contrary to the Commission's goal of making new and innovative technologies available.[27]

1. LATA-wide SMDI

LATA-wide SMDI service is an example of not providing new and innovative technologies. As stated earlier, this service allows an ISP to set and reset message indicators for any of its customers who are served out of a BOC switch in that LATA.[28] The ISP simply purchases the service in each LATA in which it seeks to do business. In addition, the ISP would only have to purchase one modem to connect into the LATA-wide SMDI service. If the BOC does not provide LATA-wide SMDI service, the ISP has to purchase SMDI service for each BOC node or switch in a LATA. So instead of one

[27] See footnote 7.
[28] See footnote 23.

SMDI service and one modem, the ISP would have to purchase multiple SMDI services and modems – which artificially increases an ISP's related costs by four to five times.

eVoice is unaware of any technical reason why certain BOCs don't provide LATA-wide SMDI, especially since other BOCs already provide it. There is clearly market demand for the service, since it drastically reduces an ISP's costs. Clearly eVoice wants the service. Likewise, any voice mail provider serving customers on multiple switches within a LATA should be interested in such a service. In fact, a BOC's information services group should be interested in the service, since it would drastically reduce its operating costs as well.

Still several BOCs don't provide the service today, even though eVoice has requested it long ago via the 120-day procedure.[29] Instead, these BOCs are effectively forcing eVoice to use the less effective, more expensive switched-based SMDI service or not provide service in that BOC's territory. eVoice has been provided with no valid reason why these are BOCs denying eVoice the service. The result of this denial of service is that it: 1. causes eVoice's costs to be artificially higher and, therefore, less competitive; and 2. improperly protects BOCs revenues by causing an ISP like eVoice to purchase more expensive and less efficient means to set and reset message indicators.

2. Mechanized Ordering

Another example of BOCs causing ISPs to use legacy systems is the lack of mechanized ordering systems that the BOCs make available to ISPs. The Commission stated:

[29] These BOCs are Pacific Bell, Southwestern Bell Telephone and Verizon in New York and in the New England States.

> "We direct each BOC to work within the IILC to develop methods to provide ISPs indirect access to BOC ONA OSS services for CNSs for their customers, and to file an amendment to its ONA plan by July 15, 1993 to report on the means by which such access can be provided. Each BOC should also report in that amendment on its own progress in providing this OSS access capability and on the methods it has established to address the security and CPNI concerns raised in this proceeding."[30]

In 1999 eVoice approached all of the BOCs about a mechanized interface that would allow eVoice to economically submit orders to the BOCs for the CNSs that eVoice needs. At that time only the BOCs in the Ameritech region had a mechanized interface.[31] Today all but one of the BOCs have a "mechanized" interface in place. Pacific Bell's mechanized interface is a good example of a BOC working within the Computer III safeguards and developing a needed, quality service. Unfortunately, not all of the BOCs developed a mechanized interface as complete as Pacific Bell's or Ameritech's. What the other BOCs have is not a fully mechanized interface. These ordering interfaces have many parts that are still manual and, therefore, prone to error. This causes eVoice and its customers to incur additional costs and delays and, thereby, weakens eVoice's ability to compete. In no event are these interfaces nearly equivalent to the CLEC OSS interfaces, which the BOCs have already put in place.

One BOC, despite the Commission's order and eVoice's request, has failed to put any type of mechanized interface in place. That BOC is Bell Atlantic. eVoice requested this service from Bell Atlantic in 1999, and after almost two years later, eVoice has yet to receive the service. Bell Atlantic keeps on promising to have a mechanized system in

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[30] *In the Matter of Filing and Review of Open Network Architecture Plans,* 8 FCC Rcd 97, at para. 12 (1993).

place but their delivery dates go unmet. Bell Atlantic cites other priorities as the reason for the dates being missed. From eVoice's and the public's perspective, however, fair competition and compliance with mandated safeguards should always be a BOC's top priority.

EVoice does not understand why after more than 6 years from when the Commission ordered the BOCs to "provide indirect access to BOC ONA OSS services for CNSs for their customers" some BOCs still don't have a fully mechanized system in place. From eVoice's perspective this is yet another example of the BOCs not taking the Computer III and ONA safeguards and related Commission mandates seriously. The result of this BOC misbehavior is that competitive ISPs are severely hampered in the marketplace, while a BOC's information service offerings are not. A non-mechanized ordering system artificially drives an ISP's costs higher and causes the ISP's customers to wait longer before receiving the service for no valid reason (with often the result being that the ISP loses business because the customer will not wait that long).

F. Disregard for Internet Posting of CEI Plans

In 1999, the Commission modified and relaxed several of the Computer III requirements. One of these relaxations resulted in the BOCs having to simply post their CEI plans on the Internet and make them accessible through their home page.[32] Two years later there are still some BOCs in noncompliance with this most basic and simple requirement.

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[31] In 1999 Ameritech's mechanized interface was known as "BOLT"; it has since been upgraded and is now known as "Passage". eVoice has been reasonably pleased with Ameritech's mechanized interface.

[32] *In the Matter of Computer III Further Remand Proceeding: Bell Operating Company Provision of Enhanced Services and 1998 Biennial Regulatory Review-Review of Computer III and ONA Safeguards and Requirements*, (1999) 14 FCC Rev. 4289 at para. 12.

The Commission clearly recognized the value of CEI plans. The Commission stated that CEI plans provide "useful information that is either not available, or not available in as much detail, from other sources"; and that the "plans present this information in a more usable form than is otherwise available to [ISPs]."[33] The Commission rightly noted that without the information in the CEI plans, new and smaller ISPs may find

> "gathering the relevant information from varied and lengthy BOC filings particularly burdensome, and accessing the information in a single document considerably more manageable. Without access to this information, competitive [ISPs] would find it more difficult to obtain the basic services they need to provide competing information services."[34]

As the Commission stated, eVoice uses and finds useful the BOCs' CEI plans. For example, CEI plans have been valuable to eVoice in determining what basic services are available. But as stated earlier, some BOCs do not make their CEI plans available on the Internet.

eVoice made an extensive search of Southwestern Bell Communications, Inc's. ("SBC") website and could not locate the CEI plans for the information services offered by Pacific Bell, Nevada Bell, Southwestern Bell Telephone, and the BOCs in the Ameritech region. The best that eVoice could find was an amendment indicating that all the CEI plans of the BOCs owned by SBC are consolidated. While these BOC CEI plans are mentioned, the plans themselves are not available on the website.

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[33] *Id.*, at para. 14.

[34] *Id.*

eVoice made an extensive search of Qwest's website and could not locate the CEI plans for the BOCs owned by Qwest. eVoice did find a simple summary of the CEI plans, but the summary is not at all useful to eVoice. Moreover, providing a summary does not meet the Commission's requirement to post the CEI plans.

Finally, eVoice made an extensive search of Verizon's website. While Verizon does post the Bell Atlantic and Nynex CEI plans, it fails to post the GTE CEI plans.

IV. ISPS ARE NOT RECEIVING NEEDED SERVICES FROM BOCS AND THE ENFORCEMENT MECHANISMS ARE NOT SUFFICIENT

Through this FNPRM the Commission specifically requests information about how effective ONA has been in providing competitive ISPs with access to basic telecommunications services.[35] Related to this, the Commission, in its effort to update the 1998 FNPRM, seeks information on the effectiveness of such enforcement mechanisms as the Network Interconnection Interoperability Forum ("NIIF").[36] Quite simply, ONA safeguards and the enforcement mechanisms are not sufficient for new, small ISPs, like eVoice, for the purposes of obtain new services needed for it to compete and provide low-cost, innovative information services.

eVoice's experience with BOCs over the last two years has been mixed at best. If a BOC currently provides the service, eVoice has had relatively little trouble in obtaining it from the BOC. If, however, eVoice is seeking a BOC to provide a new telecommunications service, then eVoice has repeatedly experienced problems in

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[35] I*d.* at para. 85.

[36] *Id.* at para. 89.

obtaining that service.[37] eVoice needs the BOCs to provide new telecommunications services if eVoice is to introduce new and innovative information services at competitive prices.

Once the BOCs' ONA plans were improved and the BOCs had their information services in the market place, there was no longer any incentive for the BOCs to introduce new telecommunications services, which could then be used by ISPs to introduce competing information services. The Commission developed mechanisms to help ISPs obtain new ONA services – namely the 120-day request process or a request to the NIIF.[38] The ISP can also file a petition for a declaratory ruling with the Commission if the ISP objects to a BOC's response to an ONA service request.[39]

As pointed out above (see Section III), the BOCs characteristically don't comply with the 120-day procedure; miss ONA service availability dates; and don't accurately report ISPs' ONA service requests. Going to the NIIF or seeking a declaratory ruling from the Commission, does not appear to be a timely and cost-effective way for a small ISP to proceed when faced with the improper denial by a BOC of a new ONA service or an unreasonable time frame for the BOC to provide the ONA service.[40] That is why

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[37] "New" does not necessarily mean a new service in the industry at large. Often a particular service is offered by certain BOCs but not by others. A service may be "new" as to a particular BOC, but it is not new in the sense that it may be technically infeasible to provide because other BOCs currently offer the service. A prime example of this is LATA-wide SMDI.

[38] *In re the Matter of Filing and Review of Open Architecture Plans, Memoranda Opinion And Order*, (1988) 4 FCC Rcd 1, at para. 69. Originally the role of the NIIF was carried out by the IILC (Information Industry Liaison Committee), which was established in 1987. Effective 1997, the IILC transferred to the NIIF all open issues and work programs underway at that time.

[39] *In re the Matter of Filing and Review of Open Architecture Plans, Memoranda Opinion And Order*, (1990) 6 FCC Rcd 7646, at para. 11.

[40] eVoice, however, is not suggesting the elimination of the NIIF mechanism. An industry forum is valuable for dealing with a broad issue that involves all or most of the BOCs. Unfortunately, each issue

eVoice recommends binding arbitration, in addition to other safeguards.[41] Arbitration is efficient, relatively inexpensive (since the time frame limits BOCs' delaying tactics, which generally just drive up an ISP's costs), prompt and decisive, as well as self-enforcing.

What is also lacking is a fast and easy way to enforce the safeguards and impose meaningful consequences for violations of the Computer III and ONA safeguards. eVoice's recommended additions to the existing safeguards, set forth in detail in Sections V and VI, are intended to specifically address this problem.

V. CONTINUE NONSTRUCTURAL SAFEGUARDS, BUT STRENGHTEN ENFORCEMENT EFFORTS

The Commission also seeks comment on whether Computer III and ONA requirements should be streamlined; and whether and how Computer III and ONA requirements can be changed so as to be more effective – especially more effective in achieving the Commission's goals and objectives.[42] Furthermore, the Commission suggests that regulations ideally be self-enforcing.

eVoice believes that if the safeguards had been rigorously followed from the beginning there would now be significantly more competition. This belief is based on eVoice's own experience that <u>if the BOCs would have complied with the safeguards</u> in their dealings with eVoice, then eVoice's costs would have been significantly lower; eVoice's rollout of services would have been earlier and covered a larger geographic

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that eVoice currently faces, is narrow, differs from BOC to BOC, and usually only involves one or two BOCs. For these types of issues, a very shortened arbitration procedure makes perfect sense.

[41] See Section V, below, in particular, parts B, C and D.

[42] See Section II B, above.

territory; eVoice's services would have had more features and been easier to use and order; and eVoice would have had more customers and increased revenue.

Needless to say eVoice strongly objects to any proposed elimination or relaxation of the existing safeguards. Retention of the existing safeguards (as well as strict and prompt enforcement along with the addition of other safeguards as suggested by eVoice in this Section V) is vitally necessary for the development of competition in information services markets like residential and small business voice mail.

The BOCs have not complied with the safeguards to date, so it makes no sense to eliminate or relax any of the safeguards. Elimination or relaxation of the safeguards would only make matters worse for the information services market, and send the incorrect signal to the BOCs that it is permissible to violate Commission rules and regulations.

eVoice believes that the problem lies in the methods used to cause the BOCs to comply with the safeguards. Relying on the BOCs to voluntarily comply has not worked. eVoice, therefore, strongly discourages the Commission from vacating the field in favor of relying on self-enforcement. eVoice, however, is mindful that the Commission has limited resources. All of eVoice's suggested additional safeguards are made with the limited resources of the Commission in mind.

A. Copy the Commission on the BOCs Response to an ISP ONA Service Request

There are some simple changes to the 120-day procedure, which do not involve significant, if any, Commission resources, but will help to curb the BOCs'

unwillingness, lack of diligence and lack of cooperation in providing ISPs with requested new ONA services.

1. Internet Posting of Incoming ONA Requests

The first and easiest change would be to require the BOCs to post on their website every ONA service request they receive, within 15 days of receipt.[43] Posting on the website will allow other ISPs to be aware of potential ONA services. Other ISPs interested in the ONA service could then notify the BOC, which in turn would help to establish market demand, as well as spread BOC costs among more ISPs.

2. Copying the Commission on Responses to ONA Requests

The BOCs should be required to copy the Commission on, and immediately post on their website, their response to any ONA service request.[44] Copying the Commission should cause the BOCs to be more responsive to requests and create more meaningful responses. It would also give the Commission the opportunity to easily review a BOC's response and determine first hand if the BOC is acting in a manner inconsistent with Computer III, ONA and the overall goals of the Commission.

3. Automatic Notification of Failed ONA Compliance

If a BOC fails to copy the Commission, or fails to post a request or response on its website, or fails to provide a proper response within 120 days, the ISP should be allowed to notify the Commission. It would take a de minimus amount of Commission resources to determine if the BOC copied the Commission or sent a proper response. If

[43] Any ISP concerned about confidentiality could simply inform the BOC, at the time of submitting its ONA service request, to redact any identifying information or any other information the ISP deems confidential.

[44] Again, if the ISP requests, the BOC would redact identifying information and other information the ISP considers confidential before posting the response on the Internet or copying the Commission.

the BOC did not, the Commission should order the BOC to respond and fine the BOC accordingly.

B. Further Define What Is Required to be in a BOC Response

Another set of simple and low-resource changes again involve the 120-day procedure.

1. Requiring a Date Certain in the 120-Day Response

First, the BOCs should be required to indicate a date certain in their ONA service responses as to when a requested ONA service will be available, unless it is currently technically infeasible to provide or it currently lacks market demand. Requiring a date certain for availability is simply good business. It has been eVoice's experience that it receives general statements on when the service "might be" or is "expected to be" available. Such statements make it difficult for eVoice, or any business, to plan and operate effectively.

2. Limit Technical Infeasibility and Market Demand Defenses

Second, the BOCs should be prohibited from claiming technically infeasibility and insufficient market demand if any other BOC is currently providing the requested ONA service. If one BOC is able to successfully offer an ONA service, then all of the other BOCs should be able to offer the service.

This change should eliminate a current loophole in the safeguards. Providing a new service to ISPs is seldom an opportunity the BOCs jump at. Providing a new service takes the BOCs' time and resources away from other priorities and the new service will more than likely assist the BOCs' competitors. The BOCs, therefore, are inclined to avoid providing a service; and can do so by simply claiming technical infeasibility or insufficient market demand. The BOCs know that a new or small ISP

generally won't complain to the NIIF or the Commission since the ISP won't have the time and resources to go head-to-head against the BOCs.

C. Required Time Frames for Availability and Binding Arbitration

1. Shifting the Burden: Enacting a 90-Day Service Availability Rule

Another simple revision would be to clarify the 120-day procedure so that the BOCs are required to make reasonable efforts to make technically feasible services available to the ISP no later than 90 days after the 120-day response period. If a BOC is going to take longer than the additional 90 days to make the service available, then the BOC, in its response (which eVoice recommends that the Commission now be copied on), must give detailed information on why additional time is needed. If the ISP disagrees with the BOC's rationale for the additional time, then the ISP may seek binding arbitration.

This revision should spur the BOCs into action. In the past the BOCs have used the inertia of the current safeguards to evade detection by the Commission. Such behavior is to the detriment of the consuming public, which should have benefited from the competition that the 120-day procedure was supposed to foster. Instead, because there is no impetus to act, the BOCs have effectively been rewarded by their complacency and foot-dragging. Shifting the burden in a public proceeding will tend to eliminate long drawn-out delays and make the BOCs take the 120-day procedure more seriously. This in turn will tend to speed the pace of innovation and the creation of better and higher technology services to consumers.

2. Binding Arbitration of Unresolved Disputes

The arbitration suggested above should take place in the city where the ISP is headquartered, unless the parties agree to another city. Because the binding arbitration would involve an extremely narrow, factual issue, the time frame to reach an arbitrated decision should be extremely short. eVoice proposes that after the BOC receives notification from the ISP, the BOC and ISP would have five business days to agree on the arbitrator. The arbitration would need to occur within thirty-five days from when the BOC received the notification. No later than 7 days before the arbitration date, parties would provide the arbitrator, and the other party, a written brief and background information, addressing why the BOC's time frame for availability of the requested ONA service is reasonable or not. Responding briefs would be served no later than two days before the arbitration date. The ISP and BOC would also submit a stipulation of relevant facts that are not in dispute. Each party would be limited to four hours of testimony.

The arbitrator would be required within 15 days to issue his/her decision on whether the BOC's availability date for an ONA requested service is reasonable. The arbitrator would also send a copy of the decision to the Commission. If the proposed service availability date isn't reasonable, the arbitrator would indicate a new, reasonable availability date, which would be binding on the BOC. In determining what is a reasonable date, the arbitrator would give sufficient weight to the length of time it took other companies to offer similar services, how long other companies have been offering similar services, and the date when the BOC was first served with the ONA service request.

The decision of the arbitrator would be final and binding. Each party would bear its own costs for the arbitration, and the arbitrator's fees would be divided equally between the parties. If the arbitrator, however, determines that one party acted in bad faith, then that party would be required to pay the other party's reasonable costs including attorney fees, and the entire amount of the arbitrator's fees.

3. Party and Commission Penalties for Tardy Service Availability

Finally, failure to provide the service by the required availability date, whether stated by the BOC or determined by the arbitrator, would result in the BOC paying fines to the ISP and possibly the Commission. eVoice suggests that the Computer III safeguards be modified to require the following fines. If the BOC misses the availability date, the BOC would be required to pay the ISP $2,500 per day for every day after the availability date that the service is not provided in good working order to the ISP. If after 60 days from the availability date the service is still not provided, the BOC, in addition to the $2,500 per day paid to the requesting ISP, will then also be required to pay $2,500 per day to the Commission for every day that the service is still not provided. The purpose of the fines is to make the ISP whole, and cost enough to deter the BOCs from delaying in the first place.

D. More Specific Information and Binding Arbitration regarding Technical Infeasibility

Another revision to the 120-day procedure should be that when the BOCs claim that a requested ONA service is technically infeasible, the BOCs must indicate in their response what specific steps, and by what date, will be taken in order to make the service technically feasible. An ISP would be able to seek binding arbitration if it believes that the ONA service is technically feasible or that the implementation

volunteered by the BOC is insufficient. Since this too is an extremely narrow, factual question, the time frame and parameters involving the binding arbitration would be the same as set forth above (see Section V, part C).

If the arbitrator determines that it is technically feasible, the parties would have five days to agree on a date for availability of the service. If they cannot agree on what is a reasonable availability date, then the arbitrator would determine the availability date, again under the same time frame and parameters as set forth in Section V, part C above.

E. Status Report on Technical Infeasible Services

For services that are technically infeasible, eVoice recommends that the Computer III safeguards be revised so as to require the BOCs to send the requesting ISP, and copy the Commission, a quarterly progress report. This report should state: 1. the specific steps taken by the BOC to make the service technically feasible; 2. what work remains to be performed before the service becomes available; 3. a specific date as to when the required work will be accomplished; and 4. the amount of money the BOC has spent to make the service available.

This minor addition to the safeguards is intended to alleviate the problem of the BOCs "stonewalling" ISPs. Again, copying the Commission on a quarterly progress report should cause the BOC to make sure that it makes progress and accurately reports the progress made. In addition, this addition helps establish a record on whether the BOC is acting in a manner consistent with the Computer III safeguards, which should assist the Commission in its continuing examination into how specific information services markets are developing.

F. Enforcement Proceeding

As a result of eVoice's experience with the BOCs, eVoice strongly urges the Commission to start an enforcement proceeding on the BOCs' noncompliance with the Computer III and ONA safeguards. While eVoice knows that this will be resource intensive, the extent of violations that eVoice has experienced dictates the need for such an enforcement proceeding.

The BOCs should be ordered to immediately correct any violation found by the Commission. The Commission should also require that the BOCs pay any damages that an ISP suffered as a result of violations of the Computer III or ONA safeguards. Finally, where a BOC violation damages any ISP in excess of $250,000, or if any BOC shows a history of violating the safeguards, then that BOC should be ordered to cease providing all of its information services on a non-structurally separate basis, and be ordered to provide all of its information services on a structurally separate basis. The BOCs should be given 60 days to implement such a requirement. The structurally separate requirement should remain in effect for at least 18 months.

While this penalty may seem harsh at first, it is needed to ensure the Commission's goals of opening the BOCs networks to competition and ensuring that technological advances are made to generate new information services and better, cheaper solutions for customers. The privileges granted the BOCs under Computer III were conditioned on the BOCs' compliance with the nonstructural safeguards. These safeguards were originally the result of balancing the need to protect competition from the monopoly power of the BOCs and the BOCs obtaining the benefits of offering information services under the relaxed Computer III framework. If a BOC has not

complied with the lesser Computer III requirements, why should that BOC get the benefits of Computer III? Accordingly, noncompliance should result in the loss of the Computer III privileges. Otherwise, a BOC will have no reason to comply, since they will get the benefits of the Computer III framework whether in compliance or not. Moreover, reverting back to a Computer II regime for a BOC found to be in violation of Computer III will help to ensure future compliance by all BOCs.

Finally, this remedy is relatively simple for the Commission to implement and monitor. Computer II safeguards draw a very clear line. eVoice suggests annual compliance reporting by the BOCs subject to Computer II. This annual reporting will assist the Commission in ensuring compliance. eVoice also suggests that the Commission, between the twelfth and eighteenth month that the BOC is subject to Computer II, conduct an audit of the BOC's compliance. This audit would be conducted at the BOC's expense. If the BOC was found to be in full compliance, the Commission would then allow the BOC to return to the Computer III framework after the eighteenth month. If the BOC was not in full compliance, the Commission would continue to require the BOC to operate under Computer II and would fine the BOC accordingly. The Commission would conduct future annual audits of that BOC, at the BOC's expense, to determine if the BOC is yet in full compliance. Only after such a determination by the Commission should the BOC be allowed to revert back to offering information services under the Computer III framework.

VI. BOCS SHOULD BE REQUIRED TO UNBUNDLE THE NETWORK FOR ISPS

The Commission asks parties to comment on whether BOCs should unbundle the network for ISPs along the same lines as for telecommunications providers. eVoice strongly supports such unbundling. [45]

If the BOCs had complied with the Computer III and ONA safeguards, then it would not be necessary to unbundle the network for ISPs along the same lines as it is unbundled for competitive telecommunications providers. But the level of noncompliance by the BOCs has turned at least two markets with bright prospects into markets with little or no effective competition. Unbundling should help restart competition.

Unbundling for telecommunications providers was required due to the monopoly BOCs have in the local telecommunications market. Unbundling was seen as an effective way to open up the market and create effective competition. Now BOCs likewise enjoy a monopolistic position in information services markets, such as residential and small business voice mail. Unbundling the network for ISPs should open up the market and create effective competition. It should allow ISPs to more easily obtain ONA services, and to do so at more competitive and market-based pricing. This will lower ISPs' costs and allow for the introduction of more innovative services, which compete with the BOCs' services – and the American public will benefit.

VII. CONCLUSION

[45] eVoice's support for this is not based on the Telecommunication Act of 1996; although nothing in the Act precludes the Commission from adopting such unbundling. eVoice's support is simply based on the general oversight authority of the Commission and the BOCs repeated violation of Computer III and ONA.

For the foregoing reasons, eVoice requests the Commission to continue all of the existing Computer III and ONA safeguards and promptly implement the additional safeguards listed in Sections V and VI. These additional safeguards strengthen the Computer III and ONA framework and do not involve extensive Commission resources. eVoice also urges the Commission to strengthen its enforcement efforts. Only through strict and swift enforcement will the Commission's stated goals of innovative services and competition be reached. Finally, eVoice urges that the Commission to institute an enforcement proceeding of BOCs' noncompliance with Computer III and ONA safeguards, and require violators to provide information services subject to Computer II structural safeguards, as further explained above in Section V, part F.

Respectfully submitted,

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